

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
OCT 5 2004  
PUBLIC SERVICE  
COMMISSION

In the Matter of:

NOTICE OF INTENT OF BERA COLLEGE )  
TO FILE AND APPLICATION FOR THE ) Case No. 2004-00331  
TRANSFER OF UTILITY ASSETS TO )  
THE CITY OF BERA )

JOINT APPLICANTS' RESPONSE TO ATTORNEY  
GENERAL'S INFORMATION REQUESTS

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The Joint Applicants, through counsel, submit the following responses to the Attorney General's Requests for Information:

**REQUEST NO. 1** - In numeric paragraphs 17 and 18 of the Application, reference is made to the fact that the College will assign its rights in, to and under the KU Contract set out in Exhibit P by way of an assignment set out in Exhibit Q. Exhibit P contains what appears to be three separate documents governing its agreement with KU; the contract for electric service executed in 1976 between KU and College (together with the supplemental agreements); the Electric Rate Scheduled WPS-87 (M) dated October 1987, and the Rules, Regulations and Conditions Applicable to Wholesale for Retail Resale Electric Service which was issued October 23, 1986 to become effective February 24, 1987.

On the final page of the Contract executed in 1976 between KU and College, provision is made to allow the assignment of rights under the contract by College to a purchaser of its electric distribution system without the prior written consent of KU. Otherwise, the rights under the contract cannot be assigned without prior written permission from KU. On page 5 of 6 of the Rules, Regulations and Conditions Applicable to Wholesale for Retail Resale Electric Service, the assignment of the contract is precluded absent receipt of prior written consent of KU. No

exception for the event of an assignment attendant to a bona fide sale of the electric distribution system is made. The Assignment provided in Exhibit Q makes no reference to receipt of prior written consent of KU.

**RESPONSE NO. 1** - The contract attached as Exhibit P to the Application was dated November 13, 1989. Apparently the first page of Exhibit P was improperly copied, and a correct copy of that page is attached as Item 1. A review of the third page of the November 13, 1989 agreement reflects that Kentucky Utilities and Berea College agreed that the contract was assignable without the consent of Kentucky Utilities if the assignee were a bona fide purchaser of the electric system as set forth in the agreement. Since the City qualifies as a bona fide purchaser under the terms of the agreement, no consent from Kentucky Utilities is required.

**REQUEST NO. 1.A.** - Please provide a copy of page 6 of the Rules, Regulations and Conditions Applicable to Wholesale for Retail Resale Electric Service. This page appears to have been inadvertently omitted.

**RESPONSE NO. 1.A.** - A copy of page 6 of the Rules, Regulations, Terms and Conditions Applicable to Wholesale for Retail Resale Electric Service is attached as Item 2.

**REQUEST NO. 1.B.** - Has the prior written consent of KU been obtained for the assignment of that contract? If not, will it be obtained? If not, why not?

**RESPONSE NO 1.B.** - The prior written consent of KU has not been obtained for the assignment of the November 13, 1989. For additional information, please see explanation set forth in Response No. 1.

**VERIFICATION**

We hereby verify that the information set forth above is true to the best of our knowledge and belief.

BEREA COLLEGE

By: E. Diane Keeby

Title: Vice President Business Administration

CITY OF BEREA

By: Randy Stone

Title: City Administrator

STATE OF KENTUCKY

COUNTY OF MADISON

The foregoing was acknowledged, subscribed and sworn to before me this 4 day of October, 2004, by E. Diane Keeby as Vice President Business Administration of Berea College.

My Commission expires: 5/17/06

Scotty Abney  
Notary Public

STATE OF KENTUCKY

COUNTY OF MADISON

The foregoing was acknowledged, subscribed and sworn to before me this 5<sup>th</sup> day of October, 2004, by Randy Stone, as City Administrator, of the City of Berea.

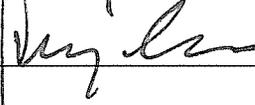
My Commission expires: 4-26-08

Cheryl Chastean  
Notary Public

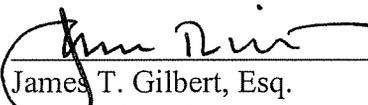
James H. Newberry, Jr.  
Noelle M. Holladay  
Wyatt, Tarrant & Combs, LLP  
250 West Main Street, Suite 1600  
Lexington, KY 40507  
859.233.2012

and

Judge B. Wilson, II  
General Counsel  
Berea College  
CPO 2211  
Berea, KY 40404  
859.985.3131

By: 

ATTORNEYS FOR BERA COLLEGE

  
James T. Gilbert, Esq.  
Coy, Gilbert & Gilbert  
212 North Second Street  
Richmond, KY 40475

ATTORNEY FOR CITY OF BERA

**CERTIFICATE OF SERVICE**

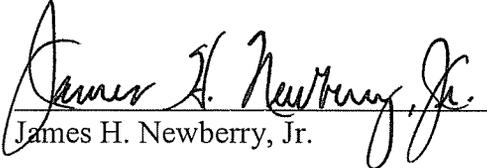
I hereby certify that a true and correct copy of the Joint Applicants' Response to Attorney General's Request for Information was served via ~~regular mail~~, upon the following:

*hand delivery JHN*

Anita Mitchell, Esq.  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40601

David Spenard, Esq.  
Elizabeth Blackford, Esq.  
Office of the Attorney General  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204

This the 5<sup>th</sup> day of October, 2004.

  
James H. Newberry, Jr.

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**ITEM 1**



**ITEM 2**

or the affected segment thereof, and retail customers of Customer will be treated alike, and Customer will cooperate fully in taking the same character of enforcement action as Company takes with respect to any such request or mandate.

#### ADJUSTMENTS

Nothing contained herein shall be construed as affecting in any way the right of Company, and Company shall at all times have the right, to unilaterally file with the Federal Energy Regulatory Commission, or other regulatory agency having jurisdiction, a change in rates, charges, classification or service, or any rule, regulation or contract relating thereto, under Section 205 of the Federal Power Act and pursuant to the Commission's Rules and Regulations promulgated thereunder, or under other applicable statutes and regulations.

#### SUPERSEDE PREVIOUS RULES, REGULATIONS, TERMS AND CONDITIONS

These Rules, Regulations, Terms and Conditions supersede all Rules, Regulations, Terms and Conditions under which Company has previously supplied electric service at wholesale for retail resale.

BC 00414